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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN TAYLOR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0610-CR-864

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David Shaheed, Judge
Cause No. 49G14-0606-CM-102461

September 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

John Taylor (“Taylor”) appeals his conviction, after a bench trial, of battery as a class A misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence exists to rebut Taylor’s self-defense claim.

FACTS

On June 5, 2006, DeMarcus Hazelwood was walking near the intersection of New York and Delaware Streets in Marion County when he was approached by his coworker Taylor and another man, later identified as Bryan Johnson. Hazelwood and Taylor were embroiled in an on-going dispute at work. Taylor accused Hazelwood of telling their supervisors lies about him. He asked, “What are you calling them for or what are you lying on me for?” (Tr. 5). According to Taylor, as he spoke, Hazelwood placed his hand into his pocket. Suddenly, Taylor struck Hazelwood in the face, bloodying his nose. Taylor then “grabbed [Hazelwood] and tackled [him] to the ground.” (Tr. 5). Taylor held Hazelwood down while Johnson kicked Hazelwood in the head and leg. (Tr. 6). The beating continued for approximately two or three minutes until a police officer who was driving past observed the incident and intervened. Hazelwood suffered a bloody nose, a contusion to his leg and a large, swollen knot above his left eye.

On June 6, 2006, the State charged Taylor with battery as a class A misdemeanor. Taylor was tried before the bench on August 15, 2006. Hazelwood was the only witness for the State. He testified that he did not initiate the fight and was not carrying a weapon

at the time of the incident pursuant to the terms of his court-ordered probation on an unrelated charge. Subsequently, Taylor testified that he tackled Hazelwood because he believed that Hazelwood carried a box cutter for work and was retrieving it from his pocket. Taylor testified further that he never struck Hazelwood and that he saw the police officer return a box cutter to Hazelwood after the incident.

After both sides rested, the trial court found Taylor guilty as charged, stating,

[T]he reality is and the simple fact of the matter is even though a person has a right to defend themselves [sic], a person . . . who puts their [sic] hand in their pocket that in and of itself does not justify any assault, tackling, hitting someone in the mouth, hitting someone in the nose, whatever. If people could be attacked just because of the mere matter that you know of them and they put their hand in their pocket then there could be assaults all over the city. Putting a hand in a pocket is not considered generally to be a threatening gesture. So, based upon that the Court find [Taylor] guilty

(Tr. 16-17). On September 12, 2006, the trial court imposed a 365-day sentence, ordering 265 days suspended to probation. Taylor now appeals.

DECISION

Taylor argues that the State failed to present sufficient evidence to rebut his claim of self-defense. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as for any claim of insufficient evidence. *Pinkston v. State*, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If sufficient evidence of probative value supports the conclusion of the trier-of-fact, we will not disturb the verdict. *Id.* at 841-42.

With regard to a claim of self-defense, we have previously stated the following:

[A] valid claim of self-defense is a legal justification for an act that is otherwise defined as ‘criminal.’ I.C. § 35-41-3-2(a). To prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. An individual is justified in using deadly force only if he ‘reasonably believes that that force is necessary to prevent serious bodily injury to himself or a third person.’ I.C. § 35-41-3-2(a). The amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. Additionally, when a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief.

Id. at 842 (internal citations omitted).

Here, Hazelwood was walking alone on a public street when Taylor, accompanied by Johnson, approached and verbally confronted him. Hazelwood testified that Taylor first struck him in the face, and then tackled and held him down while Johnson kicked him in the head and leg. Taylor, on the other hand, denied striking Hazelwood, testifying instead that he merely tackled Hazelwood after Hazelwood put his hand into his pocket. Taylor’s arguments merely amount to an invitation that we reweigh the evidence and the credibility of the witnesses, which we cannot do. *Pinkston*, 821 N.E.2d at 841.

The evidence presented at trial was sufficient to show that Taylor provoked, instigated and participated willingly in the violence against Hazelwood. Hazelwood’s act of merely placing his hand into his pocket, if it occurred, was insufficient to foster a reasonable belief in Taylor’s mind that an attack upon Hazelwood was necessary to prevent serious bodily injury to Taylor. The State has met its burden of negating at least one of the elements of self-defense, i.e., that Taylor provoked, instigated or participated

willingly in the attack upon Hazelwood. Further, the brutal nature of Taylor and Johnson's coordinated attack on Hazelwood contradicts Taylor's assertion of self-defense and, instead, evokes a more retaliatory motive. The State presented sufficient evidence to both sustain Taylor's conviction and to negate his claim of self-defense.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.